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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 1201 of 2001
Date of decision: 14.9.2007

Dhanno **...Appellant**

Versus

Surjit Kaur **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Amarjit Markan, Advocate for the appellant.

Mr. Amit Jain, Advocate for the respondent.

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RAJESH BINDAL, J.

The plaintiff, having failed in both the Courts below, has filed the present second appeal impugning the judgments and decree of the Courts below.

2. The challenge in the suit was to the decree suffered by the appellant/plaintiff in favour of her daughter on September 9, 1983. The suit was filed on April 14, 1998. The plea was that the decree was bad as the same was result of fraud and misrepresentation. However, both the Courts below did not find merit in the contention of the appellant/plaintiff as the plea raised by her could not be substantiated. Even before this Court, learned counsel for the appellant-plaintiff re-iterated the same argument. He submitted that since the decree was not registered, the same was bad as in terms of the judgment of Hon'ble the Supreme Court in **Bhoop Singh Vs. Ram Singh Major and others AIR 1996 Supreme Court 196**, a decree creating right for the first time was compulsorily registrable.

3. On the other hand, learned counsel for the respondent-defendant cited judgment of this Court in **Parveen Kumar Vs. Shiv Ram alias Sheo Ram 2000 (1) Recent Civil Reports 122** to submit that a party to a decree cannot challenge the decree himself on the plea that it was not registered. A decree can be challenged only on the ground of fraud,

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collusive or that it was passed by the Court of incompetent jurisdiction. In the present case, the plea of fraud raised by the appellant-plaintiff to challenge the decree did not find favour with the Courts below in the light of the evidence on record, which clearly proved beyond doubt that infact the appellant herself had appeared in the suit filed earlier and got her statement also recorded on April 16, 1983, a certified copy of which was placed on file as Ex. P-5. A perusal of the plaint and ground, on which the decree passed against the appellant/plaintiff on September 9, 1983 was challenged, shows that the challenge was merely on the ground of fraud and misrepresentation. No other issue was raised or framed by the Court below.

4. With these facts concurrently found by both the Courts below, I do not find any merit in the present appeal and the same is dismissed in limine.

September 14, 2007 **(Rajesh Bindal)**
Pka **Judge**